Remarks

Applicant respectfully requests reconsideration of this application in view of the following remarks.

Claims 1-20 were filed in the present application. Claims 2-5, 7, 12-15 and 18 are withdrawn from consideration as being directed to non-elected subject matter. Claims 1, 6, 8-11, 16, 17, 19 and 20 read on the elected invention. These claims are under consideration herein.

The invention relates to a composition comprising: (a) the oxygen-labile species retinol, and (b) the plant extract Chaparral extract (claim 1). Optionally, the composition also contains an isoascorbic acid derivative, and a tocopherol derivative (claim 11).

The Examiner has rejected claims 11 and 17 under 35 U.S.C. §112, first paragraph, as containing subject matter not clearly described in the specification. The Examiner asserts that the terms "isoascorbic acid derivative" and "tocopherol derivative" do not meet the written description requirement of Section 112, in that chemical structures for them are not provided.

Applicant respectfully disagrees. Both of these are old and well known classes of compounds to those working in chemistry and the skin care art. "Isoascorbic acid derivative" and "tocopherol derivative" are probably found in dozens of skin care patents. Notwithstanding this, the specification provides definitions for both. The definitions are precise. "What is meant by an isoacorbic acid derivative is isoacorbic acid and salts and esters thereof." Specification, page 5, line 8. Similarly, "[w]hat is meant by a 'tocopherol derivative' is tocopherols (e.g., α-tocopherol, β-tocopherol, δ-tocopherol, and other unsaturated isomers thereof) and salts or esters thereof (e.g., tocopherol acetate)." Specification, page 4, line 25. These definitions could not be much clearer. "Salts," "esters," and "isomers" are basic chemistry terms.

Inclusion of chemical structures would be appropriate, for example, where a previously unknown compound is disclosed, or where a complex family of organic compounds must be described. This is not the case here. These are well known ingredients. In addition, explicit definitions of both are provided. The specification

indeed conveys to one skilled in the art that the inventors had possession of the invention. Withdrawal of the rejection under Section 112 is earnestly solicited.

On the merits, Claims 1, 6, 8-11, 16, 17, 19 and 20 stand rejected under 35 U.S.C. §103(a) as obvious over Murad (US 6,630,163) in view of Yusef et al. (US 5,583,136). The Examiner argues that Murad teaches the use of Vitamin E (tocopherol), Vitamin A (beta-carotene) and Vitamin C (ascorbic acid) individually to assist the skin in scavenging free radicals. The Examiner argues that Murad also discloses an herbal supplement consisting of extracts of chaparral, dandelion root, burdock root, licorice root, Echinacea, yellow dock root, kelp and cayenne at starting at Column 5, line 64.[1] Murad is also said to teach the use of an additional pharmaceutical composition that may be a moisturizing agent, and use of a fruit extract.

Yusef is cited for skin care compositions comprising water-in-oil emulsions containing retinoids and at least one imidazole that may also contain an antioxidant.

The Examiner states it would have been obvious to use a combination of the compositions of Murad and Yusef, as "Murad teaches the extract of herbs/fruits along with tocopherol…[and] Yusef et al. teach a skin care composition containing retinoids, retinol, isoascorbic acid, and tocopherol with the same claimed concentration range…It would have been obvious to have combined the teachings of Murad and Yusef et al. and would have been motivated to combine the references because both references combined teach the claimed invention." Office Action, page 8.

Applicant submits this rejection is without merit. The Examiner has found one reference that discloses fruit extracts and one reference that discloses retinoids. He then concludes that it would have been obvious to combine them because it would have been obvious to combine them. Other than the fact that the two references relate to skin care, it is not clear what the connection between the references is.

Applicant has provided data that compositions containing a combination of oxygen labile active agent plus plant extract (i.e., Example III containing Chaparral extract and retinol) are more stable than compositions containing the oxygen labile active agent alone. See Table 3 of the specification. Comparative Examples I and II

[1] The background section of Murad discloses a prior composition containing chaparral at beginning at Column 5, line 64. This is not a Murad composition. Chaparral is not used in the Murad composition.

(no extract) lost up to 38% of the retinol after 3 months storage. In contrast, the compositions according to the invention in Examples III to XVI largely maintained their retinol stability, losing at most 29% of their retinol, and as little as no retinol (Example IX).

It is unexpected and surprising that these ingredients would behave this way together. This is not suggested by the references. Their mere disclosure of various ingredients separately used cannot suggest the surprising result of the claimed combination.

For these reasons, applicant respectfully requests reconsideration of the rejection under Section 103(a) also.

Applicant submits this case is in condition for allowance.

Date: December 14, 2007
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
Customer No. 000027777

/Sharon E. Hayner/
Sharon E. Hayner
Registration No. 33,058
732-524-2242